



Tithe Act 1936

1936 CHAPTER 43

PART III

MISCELLANEOUS AND GENERAL.

Miscellaneous.

29 Extraordinary tithe rentcharge.

The provisions of this Act shall have effect in relation to extraordinary tithe rentcharge subject to the following modifications and exceptions, that is to say:—

- (a) the amount of stock to be issued for compensation in respect of an extraordinary tithe rentcharge shall be an amount equal to the capital value thereof as ascertained under the Extraordinary Tithes Acts, 1886 and 1897;
- (b) the amount of the annuity charged by section three of this Act in respect of land out of which an extraordinary tithe rentcharge issued shall be an amount equal to four per cent. of such capital value as aforesaid;
- (c) the following enactments in this Act, that is to say, subsections (2) and (3) of section two, subsection (2) of section three, section nineteen, section twenty (except so much of subsection (1) thereof as provides that extinguishment shall not affect any right or liability in respect of sums which became due before the appointed day), section twenty-two, and section twenty-three, shall not have effect in relation to extraordinary tithe rentcharge;
- (d) section fourteen of this Act shall not have effect in relation to an annuity charged in respect of land as being land out of which an extraordinary tithe rentcharge issued, or in relation to a substituted annuity charged on an apportionment of such an annuity;
- (e) where, by reason of the land in respect of which such an annuity as aforesaid is charged being subject on any date to a long lease at a rent less than a rackrent, a sum becoming payable to the appropriate authority on that date is recovered under this Act from a person other than the estate owner in respect of the fee simple of the land, that person shall be entitled to recover the amount recovered from him simple contract debt from the person from whom that sum

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would have been recoverable by the authority if the land had not been subject to any such lease, and any amount so recoverable may be deducted from the instalment of any rent incident to the fee simple payable by the person entitled to recover under this paragraph next after the date on which the said sum is recovered from him.

30 Corn rents, and c.

- (1) As from the appointed day the provisions of the Tithe Acts which relate to the redemption of tithe rentcharge, or to the alteration of apportionments, shall apply to corn rents, rentcharges and money payments which are liable to redemption under the Tithe Acts, subject to the following modifications, that is to say:—
- (a) the powers conferred on the Minister by the said provisions shall be exercised by the Commission until all matters with respect to which they have jurisdiction otherwise than under this section have been settled;
 - (b) for the references in section four of the Tithe Act, 1918, to the First Schedule to that Act there shall be substituted references to the Sixth Schedule to this Act;
 - (c) in default of agreement for the discharge of the consideration money by an annuity, the Commission or the Minister, as the case may be, may, if the consideration money exceeds thirty pounds, on the application of the owner within the meaning of the Tithe Acts of the land, direct that it shall be so discharged;
 - (d) for the references in section four of the Tithe Act, 1918, to interest at the respective rates therein mentioned, there shall be substituted references to interest at such rate as may be determined by an agreement made under the said section or, in default of agreement, by the Commission or the Minister, as the case may be, with the approval of the Treasury.
- (2) The Minister may lay before both Houses of Parliament an order prepared by him or by the Commission containing such provisions as he or they in his or their discretion think expedient with a view to the extinguishment of such corn rents, rentcharges or money payments as aforesaid generally or of any of them, and if a resolution approving the order is passed by each House, the order shall have effect from such day as the Minister or the Commission, as the case may be, may appoint.

31 Liabilities to repair chancels, and c.

- (1) The provisions of this section shall have effect with respect to liabilities to repair chancels of churches or other ecclesiastical buildings arising from the ownership of—
- (a) tithe rentcharge extinguished by this Act in respect of which stock is to be issued under this Act;
 - (b) tithe rentcharge extinguished by this Act to which the provisions of section twenty-one of this Act apply; or
 - (c) land in which' merger or extinguishment of tithe rentcharge has taken effect and to which the provisions of section one of the Tithe Act, 1839, apply.
- (2) In respect of liability to repair arising from the ownership of a tithe rentcharge extinguished by this Act in respect of which stock is to be issued under this Act, the Diocesan Authority shall be entitled to receive a part of the stock to be issued in respect of the rentcharge equal in amount to such a sum (in this section and in the Seventh Schedule to this Act referred to as " the sum required for repairs ") as may be

reasonably sufficient, having regard to the condition of the chancel or building at the appointed day, to provide for the cost of future repairs thereof and to provide a capital sum the income of which will be sufficient to insure it for a sum adequate to reinstate it in the event of its being destroyed by fire :

Provided that, where the rentcharge was vested immediately before the appointed day for an interest in fee simple in possession in any of the following corporations or bodies, namely, Queen Anne's Bounty, the Ecclesiastical Commissioners, a spiritual rector of a rectory with cure of souls, an ecclesiastical corporation, or a university or college to which the Universities and College Estates Act, 1925, applies, the foregoing provisions of this subsection shall not have effect, but the corporation or body shall be subject to liability to repair in like manner as if the rentcharge had continued in existence and in the ownership of the corporation or body.

- (3) In respect of liability to repair arising from the ownership of a tithe rentcharge extinguished by this Act to which the provisions of section twenty-one of this Act apply, the land out of which the rentcharge issued immediately before the appointed day and the owner thereof for the time being shall be subject to liability to repair in like manner as if the land had been land to which the provisions of section one of the Tithe Act, 1839, apply.
- (4) In respect of liability to repair arising from the ownership of land in which merger or extinguishment of a tithe rentcharge has taken effect and to which the provisions of section one of the Tithe Act, 1839, apply, the land and the owner thereof for the time being shall be subject to liability to repair in like manner as if this Act had not passed.
- (5) The foregoing provisions of this section shall have effect subject to the provisions of Part I of the Seventh Schedule to this Act, which relate to the apportionment of liability to repair in certain cases.
- (6) Where the Diocesan Authority are entitled to receive under this section a part of the stock to be issued in respect of any rentcharge or rentcharges, one-half of any expenses appearing to the Commission to have been reasonably incurred by the Authority or by Queen Anne's Bounty in estimating the sum required for repairs shall be made good to them by the issue to them of a further part of that stock equal in amount to the said one-half :

Provided that the Commission may reduce the amount to be so made good, to such extent as they think just and equitable, in a case in which the liability to repair is apportionable as mentioned in Part I of the Seventh Schedule to this Act and a substantial part of such liability is not extinguished.
- (7) The provisions of Part II of the Seventh Schedule to this Act shall have effect with respect to procedure and other matters relating to the receipt of stock by the Diocesan Authority under this section.
- (8) This section and the Seventh Schedule to this Act shall have effect in relation to a chancel or building in Wales or Monmouthshire subject to the modifications specified in Part III of that Schedule.
- (9) In this section and in the Seventh Schedule to this Act the expression " Diocesan Authority " has the meaning assigned to it by the Ecclesiastical Dilapidations Measure, 1923, and that Measure, as amended by the Ecclesiastical Dilapidations (Amendment) Measure, 1929, is referred to as " the Measure."

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32 Furnishing of information by rating authorities.

- (1) The rating authority by whom a rate has been made shall, on being requested by the Commission so to do, supply to the Commission any information which is in their possession as to the amount paid or payable on account of the rate so far as assessed on any tithe rentcharge issuing out of land in the area to which the rate applied.
- (2) A rating authority shall, on being requested by the Commission so to do, inform the Commission as respects any land in their area whether it was on the first day of April, nineteen hundred and thirty-six, land in respect of -which rates were assessable.

33 Limitation of personal liability of trustees, and c. as owners of land.

In proceedings taken against any person for the enforcement of a personal liability to pay any sum imposed by this Act on that person as being the owner of land, if he proves that the ownership of the land was vested in him in the capacity of a trustee or personal representative, and that his rights of indemnity are, otherwise than by reason of negligence or default on his part, insufficient to provide for his reimbursement in respect of that liability, the court may give such directions for the limitation or release of that liability as the court thinks just and equitable.

34 Reduction of annuity charged in respect of land washed away by the sea.

If any land in respect of which an annuity is charged is washed away by the sea, the appropriate authority shall by order make such reduction in the amount of the annuity as appears to them to be just, or, if the whole of the land is so washed away, shall by order extinguish the annuity.

35 Application to Crown lands, and c.

This Act shall apply to tithe rentcharge, to corn rents, rentcharges and money payments which are liable to redemption under the Tithe Acts, and to land, belonging to any Government department, or belonging to any public officer or body on behalf of His Majesty for government purposes, or belonging to His Majesty in right of the Crown, or of the Duchy of Lancaster, or belonging to the Duchy of Cornwall, and in relation to such rentcharge, rent, payment or land this Act binds the Crown and, for the purposes of this Act, the officer or body having the management of any such rentcharge, rent, payment or land shall represent His Majesty.

36 Ultimate custody of tithe apportionments, collecting lists, and c.

- (1) As soon as it appears to the Commission or to the Board that a document placed at their disposal under section six of this Act is no longer required by the Commission or the Board for the purpose of the discharge of their functions under this Act, they shall cause it to be delivered into the custody of the person who but for the provisions of that section would have been entitled to the custody thereof.
- (2) Subject to the provisions of section six of this Act, sealed copies made pursuant to the Tithe Acts of instruments of apportionment shall be under the charge and superintendence of the Master of the Rolls, who may direct that any such copy shall be transferred to the Public Record Office, or to any public library or museum or historical or antiquarian society which may be willing to receive it, and if any such copy is transferred to any public library or museum or historical or antiquarian society,

the governing body thereof shall thereafter have the custody thereof and shall be responsible for the proper preservation thereof.

The Master of the Rolls may make rules for giving effect to this subsection.

37 Adaptation of references to tithe rentcharge.

- (1) Any enactment or instrument whereby the extent of any right or obligation is to be determined by reference to the amount for the time being payable in respect of tithe rentcharge shall, unless the context otherwise requires, have effect in relation to any period after the appointed day as if the amount so payable had been ninety-one pounds eleven shillings and twopence for every hundred pounds of tithe rentcharge, and proportionately greater or lesser amounts for tithe rent-charge of more or less than one hundred pounds.
- (2) In the case of a testamentary instrument executed before the commencement of this Act, a disposition referring to tithe rentcharge shall be construed and have effect in relation to a rentcharge extinguished by this Act as if the reference had included a reference to the stock issued in respect thereof.

38 Power of Queen Anne's Bounty to make consequential adjustments.

For the purpose of making adjustments consequential upon the extinguishment of tithe rentcharge, Queen Anne's Bounty shall give effect to the provisions of Part II of the Third Schedule, and shall have the powers specified in the Eighth Schedule, to this Act.

General.

39 Powers for determination of questions in performance of functions under this Act.

- (1) The provisions of the Arbitration Acts, 1889 to 1934, with respect to—
 - (a) the administration of oaths and the taking of affirmations;
 - (b) the correction of mistakes and errors in awards;
 - (c) the summoning, attendance and examination of witnesses and the production of documents;
 - (d) the cost of proceedings; and
 - (e) the statement in the form of a special case for the decision of the court of any question of law arising in the course of the reference;

shall apply in respect of proceedings before the Commission or the Board for the purposes of this Act, and, except as regards costs and the statement of special cases, in respect of references to the Arrears Investigation Committee, and at any inquiry held by the Commission or the Board for the purposes of this Act, but save as aforesaid the said Acts shall not apply to or at any such proceedings, reference or inquiry.

- (2) Before making a determination in relation to any matter which they are authorised by this Act to determine, the Commission or the Board, as the case may be, shall give to any person who satisfies them that he is interested in the land or in the compensation to be made in respect of the tithe rentcharge, as the case may be, to which the determination relates an opportunity of making representations, and any person who satisfies the Commission, or the Board, or the court, as the case may be,

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that he is so interested may apply for the statement in the form of a special case of any question of law arising in relation to the matter.

- (3) Subject as aforesaid, a determination of the Commission or of the Board in relation to any matter which they are authorised by this Act to determine shall be binding and conclusive for all purposes.
- (4) The Commission, the Board and the Arrears Investigation Committee shall cause proper records to be kept of determinations and directions made or given by them respectively, and any entry in any book or other document kept for the purposes of this subsection, or a copy thereof upon which is endorsed a certificate purporting to be signed by an officer of the Commission, or of the Board, or by a person authorised in that behalf by the Committee, as the case may be, stating that the copy is a true copy, shall in all legal proceedings be evidence of the entry and of the determination or direction referred to and of the regularity thereof.

40 Exercise by the Commission of certain powers conferred by the Tithe Acts.

- (1) The powers conferred by section three of the Tithe Act, 1847 (which relates to the correction of instruments of apportionment), and of section thirty-four of the Tithe Act, 1860 (which relates to the determination of the parish in respect of which a tithe rent-charge ought to have been charged where land has been made chargeable in more than one parish), shall be exercisable by the Commission either before or after the appointed day, and in relation to a tithe rentcharge or to land in respect of which any of the said powers is exercised by the Commission after the appointed day this Act shall have effect as if the correction or determination, as the case may be, had been made immediately before the appointed day.
- (2) The powers conferred by section twenty-six of the Tithe Act, 1860 (which relates to the detachment of maps from instruments of apportionment), shall be exercisable by the Commission either before or after the appointed day.

41 Power to enter and inspect land.

Any person authorised in writing by the Commission or the Board for the purpose shall have a right, on production of his authority, to enter on and inspect at all reasonable times any land for the purpose of obtaining any information required by them for the discharge of their functions under this Act.

42 Service and proof of documents.

- (1) Any notice or other document required or authorised to be served under this Act may be served either—
 - (a) by delivering it to the person on whom it is to be served; or
 - (b) by leaving it at the usual or last known place of abode of that person; or
 - (c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode; or
 - (d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office.

- (2) In relation to any document issued by or under the authority of any Government department for the purposes of this Act, the Documentary Evidence Act, 1868, as amended by the Documentary Evidence Act, 1882, shall have effect as if the Commission and the Board were included in the first column of the Schedule to the first-mentioned Act, and any person authorised to act on behalf of the Commission or the Board, as the case may be, were mentioned in the second column of that Schedule, and the regulations referred to in those Acts included any such document as aforesaid.

43 Inspection of, and evidence of entries in, annuities register and map.

- (1) An annuities register and map shall be open for inspection by any person during all usual office hours, and any person may require a copy of, or extract from, entries in an annuities register or map to be certified by an officer of the appropriate authority, and there shall be paid for any such certified copy or extract such reasonable fee as may be prescribed.
- (2) A copy of, or extract from, entries in an annuities register or map, upon which is endorsed a certificate purporting to be signed by an officer of the appropriate authority stating that the copy is a true copy, shall in all legal proceedings be admissible in evidence as of equal validity with the register or map, without proof of the handwriting or official position of the person purporting to sign the certificate.

44 Treasury authorisation.

A consent, approval or direction, required to be given by the Treasury for the purposes of this Act may be given either generally for any class of case or for any particular transaction.

45 Commission's reports to Parliament.

The Commission shall cause a report of their proceedings to be laid before both Houses of Parliament at the expiration of seven years from the commencement of this Act, and thereafter at the expiration of each period of two years until the date on which all matters with respect to which they have jurisdiction under this Act have been settled, and also as soon as may be after that date.

46 Consequential amendment of 18 and 19 Geo. 5. No. 2.

In subsection (3) of section one of the Tithe (Administration of Trusts) Measure, 1928, there shall be substituted for the words " through a committee for " a collection area constituted under section ten of " the Tithe Act, 1925," the words " by Queen Anne's " Bounty."

47 Interpretation.

- (1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—
- " agricultural land " means agricultural land as defined in section two of the Rating and Valuation (Apportionment) Act, 1928, and buildings (including dwelling-houses) occupied together with such land and used primarily in connection with agricultural operations thereon;

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" annuity " means a redemption annuity charged by section three of this Act or a substituted annuity, and " substituted annuity " has the meaning assigned to it by section ten of this Act;

" annuities register " and " annuities map " mean respectively a register and a map sealed under section nine of this Act;

" appropriate authority " means, in relation to an annuity under the management of the Commission, the Commission, and, in relation to an annuity under the management of the Board, the Board;

" arrears " has the meaning assigned to it by section twenty of this Act;

" benefice " includes all rectories with cure of souls, vicarages, perpetual curacies, endowed public chapels and parochial chapelries, and chapelries or districts belonging or reputed to belong or annexed or reputed to be annexed to any church or chapel, and districts formed for ecclesiastical purposes by virtue of statutory authority, and includes benefices in the patronage of the Crown or of the Duchy of Cornwall;

" contingent rentcharge " means tithe rentcharge issuing out of lands exempted by virtue of section seventy-one of the Tithe Act, 1836, from the payment thereof whilst in the occupation of the owner of the lands or otherwise subject to special incidents;

" district " means the parish or other district treated as a separate district for the commutation of tithes under the Tithe Act, 1836;

" ecclesiastical corporation " has the meaning assigned to it by the Episcopal and Capitular Estates Act, 1851;

" ecclesiastical tithe rentcharge " means tithe rent-charge the fee simple in possession whereof was vested in Queen Anne's Bounty by the Tithe Act, 1925, or which became attached to a benefice or to an ecclesiastical corporation for an interest in fee simple in possession after the appointed day for the purposes of that Act, or which is at the commencement of this Act and immediately before the appointed day vested in fee simple in possession in the Ecclesiastical Commissioners;

" extraordinary tithe rentcharge " means a rent-charge payable under the Extraordinary Tithes Acts, 1886 and 1897;

" interest date " and " payment date " mean the first day of April and the first day of October;

" instrument of apportionment " means an instrument of apportionment made and confirmed, or an instrument of altered apportionment made, under the Tithe Acts, and includes a certificate of capital value sealed under the Extraordinary Tithes Acts, 1886 and 1897, and a map annexed to any such instrument or certificate or detached therefrom under section twenty-six of the Tithe Act, 1860;

" lay tithe rentcharge " means any tithe rentcharge other than ecclesiastical tithe rentcharge;

" prescribed " means prescribed by rules made by the Commission, or, in relation to annuities under the management of the Board, the Board;

" present value " means, in relation to a payment made or sum issued on any date, the value of that payment or sum at the first day of October, nineteen hundred and thirty-six, as determined by the Treasury on the basis of interest at three per cent per annum;

" re-apportioned rentcharge " means a tithe rent-charge which has been re-apportioned by the authority for the time being exercising jurisdiction

in that behalf under the Tithe Acts, or which has, before the first day of April, nineteen hundred and thirty-three, been reapportioned, as between lands identified by numbers in an instrument of apportionment, by the owners of the rentcharge and of the lands and has been recovered on the basis of such re-apportionment;

" stock " means redemption stock;

" Tithe Acts " means the Tithe Acts, 1836 to 1925;

" tithe rentcharge " means tithe rentcharge issuing out of lands and payable in pursuance of the Tithe Acts, and includes a rentcharge into which a corn rent was converted under those Acts, and also (except in such portions of this Act as do not have effect in relation to extraordinary tithe rentcharge) extraordinary tithe rentcharge, but does not include a rentcharge payable under the Tithe Act, 1860, in respect of the tithes on any gated or stinted pasture, nor a sum or rate payable for each head of cattle or stock turned on land subject to common rights or held or enjoyed in common.

- (2) In this Act, unless the context otherwise requires, in relation to a re-apportioned rentcharge, references to a tithe rentcharge shall be construed as references to each of the rentcharges resulting from the re-apportionment, and references to the land out of which a tithe rent-charge issued shall be construed as references to the lands respectively on which those rentcharges were reapportioned.
- (3) References in this Act to the amount of a tithe rentcharge shall be construed as references to the apportioned or par amount thereof.
- (4) In calculating for the purposes of this Act the amount of any stock, of any annuity, of any instalment of an annuity, or of any sum payable on account of tithe rentcharge, fractions of a penny less than a halfpenny shall be disregarded, and fractions of a penny amounting to a halfpenny or more shall be treated as a whole penny.

48 Short title, construction, extent and repeal.

- (1) This Act may be cited as the Tithe Act, 1936, and shall be construed with the Tithe Acts, 1836 to 1925, and those Acts and this Act may be cited together as the Tithe Acts, 1836 to 1936.
- (2) This Act shall extend to England and Wales only.
- (3) The Acts mentioned in the Ninth Schedule to this Act shall be repealed as from the appointed day to the extent specified in the third column of that Schedule, except as regards any tithe rentcharge not extinguished by this Act.